

REMARKS

By the *Office Action* of 26 August 2004, Claims 1-93 are pending in this Application, and all stand rejected.

No new matter is believed introduced by the present *Response and Amendment*. It is respectfully submitted that the present Application is in condition for allowance for the following reasons.

1. Docket Number and Change in Correspondence Address

Applicant respectfully requests the docket number of this Application be changed from 81607-1200 to STAT1200. The prosecution of this Application has been transferred to a new law firm, and its docketing procedures would benefit from this new docket number. A *Request to Withdrawal as Attorney* was filed 27 September 2004 which transferred this Application to the below listed firm. To perfect this change in counsel, Applicant submits herewith A *Revocation and Appointment of Power of Attorney* to the present firm and a *Change of Correspondence Address*.

2. The 35 U.S.C. §§ 102(e) and 103(a) Claim Rejections

Claims 1-93 are currently pending in this Application, and all stand rejected. Specifically, the Examiner asserts the following rejections:

Claims 1, 3, 4, 8, 13-18, 20, 22, 23, 27-30, 32-35, 37, 41, 42, 44, 45, 49, 57-60, 63-68, 70, 71, 73, 74, 81-84, and 87-93 are rejected under 35 U.S.C. § 102(e) as being anticipated by Rieser et al. (U.S. Patent Application Publication No. 2001/0034223);

Claims 2, 5-7, 21, 24-26, 43, 46-48, 72, and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rieser et al. in view of Antonucci et al. (U.S. Patent Application Publication No. 2001/0021646);

Claims 9-11, 19, 50-53, 61, 76-79, and 85 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rieser et al. in view of Wheeler et al. (U.S. Patent Application Publication No. 2002/0072348);

Claims 12, 31, 54, 62, 80, and 86 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rieser et al. in view of Tendler (U.S. Patent No. 5,555,286);

Claims 36, 38, and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rieser et al. in view of Hunter et al. (U.S. Patent Application Publication No. 2003/0069002);

Claims 40 and 69 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rieser et al. in view of Manis et al. (U.S. Patent Application Publication No. 2003/0133473); and Claims 55 and 56 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Rieser et al. in view of Struhsaker (U.S. Patent Application Publication No. 2002/0098858).

3. 37 C.F.R. § 1.131 Declaration of Thomas D. Petite

As the Examiner properly acknowledges in the *Office Action*, the effective § 102(e) reference date of a U.S. patent resulting from an international application filed before 29 November 2000 is the date that the international application satisfied the requirements of 35 U.S.C. § 371(c), ¶¶ 1, 2, and 4. *Reiser et al.* is a U.S. patent application resulting from an international application filed prior to 29 November 2000. Thus, the effective reference date for *Reiser et al.* under § 102(e) is 20 April 2001 because *Reiser et al.* satisfied the requirements of 35 U.S.C. § 371(c), ¶¶ 1, 2, and 4 on this date.

In response to the §102(e) rejection, Applicant submits herewith a 37 C.F.R. § 1.131 (“Rule 131”) declaration to overcome the § 102(e) and § 103(a) rejections. According to Rule 131, an Applicant may establish prior invention by showing facts that the Applicant reduced to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. 37 C.F.R. § 1.131. Additionally, original exhibits of drawings or records, or photocopies thereof, must accompany and form part of an Applicant’s Rule 131 declaration or their absence satisfactorily explained. *Id.*

Applicant’s Rule 131 declaration and accompanying exhibits set forth facts sufficient to show that Applicant conceived prior to the 20 April 2001 effective date of *Reiser et al.* (*See Declaration of Thomas D. Petite*, ¶¶ 3-6, Exhibits A and B). Specifically, Applicant’s 11 June 2000 letter and provisional patent application filed 21 March 2001 (Serial No. 60/277,571) evince that Applicant conceived the currently claimed invention prior to the effective date of *Reiser et al.* (20 April 2001). *Id.* Applicant’s declaration and accompanying exhibits also set forth facts sufficient to show that Applicant exercised due diligence in reducing the currently claimed invention to practice and filing an application directed to the currently claimed

invention. (*Id.* at ¶¶ 5-7, Exhibits A and B). Specifically, Applicant's 11 June 2000 letter discusses that Applicant was diligently reducing Applicant's currently claimed invention to practice during June 2000, and Applicant's 21 March 2001 provisional application evinces that Applicant was diligently working with intellectual property counsel to prepare and file a provisional patent application directed to Applicant's invention. *Id.* Further, Applicant's Rule 131 declaration also sets forth that Applicant continued to work diligently reducing the currently claimed invention to practice and with intellectual property counsel to prepare and file this Application. (*Id.* at ¶ 7).

Applicant respectfully submits that Applicant's Rule 131 declaration satisfies the requirements of Rule 131. Applicant also respectfully submits that Applicant's Rule 131 declaration sets forth facts to show conception prior to the effective date of *Reiser et al.* coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of an application.

Applicant, therefore, respectfully submits that *Reiser et al.* does not now qualify as prior art, and accordingly requests withdrawal of the § 102(e) rejection. Applicant also respectfully requests that the § 103(a) rejections be withdrawn in light of Applicant's Rule 131 declaration because the cited § 103(a) references can not be properly combined with *Reiser et al.* since *Reiser et al.* does not now qualify as prior art.

4. Fees

Applicant believes that no Claims fees are due, as the total number of Claims, and independent Claims, is equal to the number of Claims paid for upon filing this Application.

Further, this *Response and Amendment* is being filed within five months of the *Office Action*. Thus, Applicant submits herewith a petition for a two-month extension and the two-month extension fee (\$225.00).

No additional fees are believed due, nonetheless, authorization to charge deposit account No. 20-1507 is given herein should fees be due.

CONCLUSION

By the present *Response and Amendment*, the Application has been in placed in full condition for allowance. Accordingly, Applicant respectfully request early and favorable action. Should the Examiner have any questions or reservations, the Examiner is invited to telephone the undersigned Attorney at 404.885.2773.

Certificate of Mailing:

I hereby certify that this correspondence is being submitted to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 with sufficient postage as first class mail in accordance with §1.8 on this date, and the correspondence includes a certificate for each piece of correspondence stating the date of transmission. The person signing the certificate has a reasonable basis to expect that the correspondence will be transmitted on or before the date indicated.

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Signature

25 January 2005

Respectfully submitted,



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